

U. S. DEPARTMENT OF LABOR
Employees' Compensation Appeals Board

In the Matter of RUBY J. CONWELL and U.S. POSTAL SERVICE,
POST OFFICE, Chicago, Ill.

*Docket No. 97-2378; Submitted on the Record;
Issued April 6, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's May 12, 1996 request for reconsideration.

In a decision dated August 19, 1996, the Office denied appellant's May 12, 1996 request for reconsideration on the grounds that it was untimely filed and failed to show clear evidence of error.

The Board finds that the Office properly denied appellant's request.

Section 8128(a) of the Federal Employees' Compensation Act does not grant a claimant the right to a merit review of his case.¹ Rather, this section vests the Office with discretionary authority to review prior decisions:

"The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. The Secretary, in accordance with the facts found on review may --

(1) end, decrease, or increase the compensation awarded; or

(2) award compensation previously refused or discontinued."²

The Office, through regulations, has imposed limitations on the exercise of its discretionary authority under 5 U.S.C. § 8128(a). As one such limitation, the Office has stated that it will not review a decision denying or terminating a benefit unless the application for

¹ *Gregory Griffin*, 41 ECAB 186 (1989); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

² 5 U.S.C. § 8128(a).

review is filed within one year of the date of that decision.³ The Board has found that the imposition of this one-year limitation does not constitute an abuse of the discretionary authority granted the Office under 5 U.S.C. § 8128(a).⁴

The latest merit decision issued in this case was a November 25, 1985 decision finding no injury-related residuals on or after January 7, 1981. In a February 16, 1988 decision denying a request for reconsideration, the Office gave notice that any additional requests for reconsideration must be made within one year of the date of the notice. Appellant's May 12, 1996 request for reconsideration is therefore untimely.

The Board has held that a claimant has the right to secure review of an Office decision upon presentation of new evidence that the decision was erroneous.⁵ The Office will reopen a claimant's case for merit review, notwithstanding the one-year filing limitation set forth in 20 C.F.R. § 10.138(b)(2), if the claimant's application for review shows "clear evidence of error" on the part of the Office.⁶

The Board finds that appellant's May 12, 1996 request for reconsideration fails to show clear evidence of error. She asked that all of her medical records at the employing establishment medical unit be made available to the Office. Appellant noted that she was put on permanent light duty from 1984. She inquired whether she was entitled to an award for the loss of use of her left arm, hand and shoulder. None of this clearly demonstrates that the Office's November 25, 1985 decision finding no residuals of her 1980 injury after January 7, 1981 was erroneous. Appellant's light duty since 1984 may be due to factors unrelated to the accepted employment injury and is therefore not inconsistent with the Office's decision that residuals of the accepted injury ceased by January 7, 1981.

Because appellant's untimely request for reconsideration failed to show clear evidence of error, the Board finds that the Office did not abuse its discretion in denying that request.

³ 20 C.F.R. § 10.138(b)(2).

⁴ See cases cited *supra* note 1.

⁵ *Leonard E. Redway*, 28 ECAB 242, 246 (1977).

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.3(b) (May 1991).

The August 19, 1996 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
April 6, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

Michael E. Groom
Alternate Member